IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.1690 of 2017
and
W.M.P.No.1656 of 2017

Bhoomi and Buildings Pvt. Ltd.,
rep. by its Authorized Signatory,
Sundar Arumugam. ...Petitioner

Vs.

The Commercial Tax Officer,
Adyar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the impugned proceedings of the respondent and to quash the same passed in TIN / 33170964178/2014-15, dated 02.01.2017, by the respondent and further, to direct the respondent to redo the assessment, after calling for the books of accounts of the petitioner.

For Petitioner : Mr.N.Murali

For Respondent : Mr.M. HariHaran
Additional Government Pleader

O R D E R

Heard Mr.N.Murali, the learned counsel appearing for the petitioner and Mr.M.Hari Haran, the learned Additional Government Pleader, for the respondent. Since the pleadings are complete, the Writ Petition is taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) has filed this Writ Petition, challenging the assessment order passed under the provisions of the TNVAT Act for the assessment year 2014-15, on the ground of

violation of principles of natural justice, as the petitioner did not have an adequate opportunity to putforth their submission before the Assessing Officer.

3. Before I move further to consider the validity of the impugned assessment order, it would be relevant to note that, an identical order, as impugned in this Writ Petition, was passed by the respondent, for the assessment year 2013-14, dated 27.01.2017, which was challenged by the petitioner in W.P.No.5239 of 2017, and the Writ Petition was allowed, by order, dated 02.03.2017, accepting the stand taken by the petitioner and that the said assessment order is in violation of principles of natural justice, and the assessment was directed to be redone by the Assessing Officer.

4. I am informed by the learned counsel appearing for the petitioner that, after such remand, the Assessing Officer accepted the stand of the dealer/petitioner and taking into consideration the Form - L return filed by the petitioner, has completed the assessment. Therefore, we need not labour much to consider as to whether the impugned order is vitiated or not, since it has already been set aside for the assessment year 2013-14, which is also on similar ground. The mistake has occurred on account of the fact that the respondent came to know about the sale of products to the tune of Rs.9,50,82,500.00 as per the profit and loss account, and issued notice, stating that the petitioner has not reported the same, in Form-WW report. The petitioner's explanation is that, this amount is with regard to sale of immovable property, and it has been shown under clause 16 of the Return under the head 'Revenue from Operation'. The dealer would further explain that the return has to be filed, as per the amended format under the amended Companies Act, which does not provide for sale of movable and immovable assets and all revenue from operation are clubbed under one single head. Therefore, the petitioner, while submitting their objections, dated 24.10.2016, requested opportunity before the respondent by meeting him in person and submit documents, which may be required to complete the assessment. Unfortunately, the respondent did not afford such an opportunity, and without considering the explanation offered by the petitioner that the said amount represents the consideration received on account of sale of property covered under 11 sale deeds, has completed the assessment.

5. Thus, the impugned order suffers palpable errors apart from being in total violation of principles of natural justice. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorized representative of the petitioner and

redo the assessment both for the assessment year 2013-14 and the impugned assessment year 2014-15, in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sd

To

The Commercial Tax Officer,
Adyar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.N.Murali, Advocate, S.R.No.4959
+1cc to the Government Pleader, S.R.No.5785

Writ Petition No.1690 of 2017

VD(CO)
RRK(20/02/2018)